IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO.26 OF 2004**

Raminder Singh Sahani. ...Petitioner
V/s.
Japfa Oberoi Agro Ltd. & Anr. ...Respondents

Mr.Ganesh Gole for Petitioner.
Mr.M.S. Mohite for Respondent No.1.
Mr.D.P. Adsule, A.P.P. for State.

**CORAM : A.S. AGUIAR, J.**
**DATED : SEPTEMBER 2, 2004.**

**P.C. :-**

1. Heard learned Advocates for the parties. Rule. By consent, Rule made returnable forthwith.

2. The petitioner seeks quashing of the order dated 16th October, 2003 passed by the 5th Additional Sessions Judge, Pune, partly allowing the application of the petitioner to summon and examine the complainant and thereafter, permit the petitioner to cross-examine the complainant. The impugned order dated 16th October, 2003 only allows the petitioner-accused to cross-examine the complainant and not for examination-in-chief.

3. The attention of this Court is drawn to Section

145 of the Negotiable Instrument Act, 1881. Clause 2 of the said Section cast an obligation on the court to summon and cross-examine any person giving evidence on affidavit as to the facts contained therein on an application made either by the prosecution or the accused. Petitioner herein is an accused and desires that the complainant be examined in Court and thereafter cross-examined.

4. However, learned Advocate for the respondent objects to the application as the only ground stated in the application by the accused/petitioner for summoning the complainant for recording his evidence is that the affidavit of evidence is vague. However, it is contended by the learned Advocate for the petitioner that a perusal of the said affidavit shows that there is nothing vague in the said affidavit and therefore, there is no need for the complainant to be called for the purpose of recording his examination-in-chief. The affidavit filed is sufficient and this in keeping with the spirit of the amendment which is to expedite the hearing and disposal of cases under Section 138 of the

Negotiable Instrument Act.

5. Be that as it may. Sub-section 1 of 145 of the N.I. Act makes it obligatory on the courts to summon and examine the complainant on the application made by the accused. In view thereof, petition allowed.

5. Learned J.M.F.C., Pune, is directed to summon the complainant and record his examination-in-chief and thereafter, permit the accused-petitioner to cross-examine the complainant. The trial to be concluded within three months from the date of receipt of writ of this Order.

. With the above order, Rule made absolute. Petition to stand disposed of.

**(A.S. AGUIAR, J.)**